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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

CASE NO.: BK-N-24-50300-hlb
Chapter 11 – Subchapter V

BREITMEYER FABRICATIONS, INC.,

MOTION FOR ORDER COMPELLING TURNOVER OF PROPERTY OF THE ESTATE

Hearing Date: October 2, 2024
Hearing Time: 2:30 p.m.

Debtor and debtor in possession, BREITMEYER FABRICATIONS, INC. (“Debtor”), by and through its counsel of record, Kevin A. Darby, Esq. of Darby Law Practice, Ltd., hereby seeks an order of this Court compelling MICHAEL K. MONAHAN (“Monahan”) to turnover property of Debtor’s bankruptcy estate as detailed herein (the “Motion”). This Motion is made pursuant to 11 U.S.C. §§105, 362, 541 and 542, is supported by the Declarations of Martin W. Breitmeyer III (the “Breitmeyer Declaration”) and Kevin A. Darby, Esq. (the “Darby Declaration”), and is based on the following points and authorities.

POINTS AND AUTHORITIES

I. INTRODUCTION

Monahan is in possession and control of various equipment and machinery owned by the Debtor, which is identified on Exhibit 1 hereto as those items that do not have **** next to the equipment asset number (the “Equipment”). The Equipment was left in Debtor’s former leased

1 premises when Debtor vacated it shortly before the bankruptcy case was filed. Monahan is Debtor's
 2 former landlord and remains in possession and control of the Equipment. The Equipment constitutes
 3 property of the Debtor's bankruptcy estate and must be turned over by Monahan to Debtor as a
 4 debtor in possession. Debtor, through Counsel, has made demand for Monahan to return the
 5 Equipment to Debtor, but Monahan has failed to do so. As more fully detailed below, this Court
 6 should enter an order compelling Monahan to immediately turnover and/or surrender to Debtor all
 7 Equipment in his possession that constitutes property of the bankruptcy estate, including, but not
 8 limited to, the Equipment listed in Exhibit 1.

9 **II. FACTUAL BACKGROUND**

10 1. Debtor, a Nevada corporation, operates a machine shop in Reno, Nevada, focusing
 11 on hydraulic equipment repair and fabrication work.

12 2. In September 2021, Debtor's principal, Martin W. Breitmeyer III ("Breitmeyer")
 13 entered into a Stock Purchase Agreement pursuant to which he purchased an existing machine shop
 14 business from Monahan, including the Equipment, as defined above and listed in Exhibit 1 hereto.
 15 *Breitmeyer Declaration*, ¶3. All Equipment, other assets and rights acquired from Monahan were
 16 transferred to Debtor. *Id.*

17 3. At the time the business was purchased, Breitmeyer entered into a Commercial Real
 18 Estate Lease with Option to Purchase with Monahan, pursuant to which Breitmeyer leased a 17,000
 19 square foot building with offices and a yard located at 1615 Marietta Way, Sparks, Nevada 89431
 20 (the "Leased Premises"). *Breitmeyer Declaration*, ¶ 4. Debtor previously operated its business at
 21 the Leased Premises.

22 4. Pre-petition, Monahan agreed to terminate the lease and Debtor vacated the Leased
 23 Premises and removed some of its equipment and machinery. However, the Equipment was not
 24 removed and, to the best of Debtor's knowledge, remains at the Leased Premises. *Breitmeyer*
 25 *Declaration*, ¶ 5.

26 5. On March 28, 2024, Debtor filed a voluntary petition under Chapter 11 of the
 27 Bankruptcy Code (the "Petition Date"), on which it designated this case as a Subchapter V small
 28 business case. Debtor is a debtor and debtor in possession pursuant to Sections 1182(2) and 1184

1 of the Bankruptcy Code.

2 6. On May 15, 2024, Debtor's Counsel sent a letter to Monahan demanding the
3 turnover of the Equipment to Debtor. *Darby Declaration*, ¶ 2 and Exhibit 1 thereto.

4 7. On May 21, 2024, Monahan contacted Debtor's Counsel confirming he received
5 the May 15, 2024 letter. *Darby Declaration*, ¶ 3.

6 8. On May 25, 2024, Monahan informed Debtor's Counsel that he disputed that some
7 of the Equipment is owned by the Debtor, but he has never identified the items in dispute. *Darby*
8 *Declaration*, ¶ 4.

9 9. As of the date of this Motion, Monahan has refused and failed to comply with the
10 provision of the Bankruptcy Code and to surrender all Equipment to the Debtor and its bankruptcy
11 estate.

12 **III. LEGAL DISCUSSION**

13 **A. Monahan should be compelled to turnover and transfer the Equipment to Debtor.**

14 Pursuant to 11 U.S.C. §541 all property owned by the Debtor on the Petition Date became
15 property of a bankruptcy estate subject to the jurisdiction of this Court and the protections of the
16 Bankruptcy Code. Section 542(a) of the Code provides that any person or entity in possession or
17 control of property of the estate shall deliver such property to the estate and account for the property
18 or the value of the property.

19 In this case, the Equipment constitutes property of Debtor's bankruptcy estate. Monahan is
20 in possession of the Equipment and, in turn, he is in possession of property of Debtor's bankruptcy
21 estate. Pursuant to 11 U.S.C. §542(a), Monahan must turnover the Equipment to the Debtor.
22 Monahan has refused and failed to do so. Therefore, it has become necessary for this Court to enter
23 an order compelling Monahan to surrender the Equipment to the Debtor by making all Equipment
24 available to be picked up by Debtor or its chosen agent(s).

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IV. CONCLUSION

Based on the foregoing, this Court should enter an order compelling Monahan to immediately surrender all Equipment to Debtor and awarding any such other relief this Court deems to be appropriate or necessary.

DATED this 28th day of August, 2024.

DARBY LAW PRACTICE, LTD.

/s/ Kevin A. Darby

By:

KEVIN A. DARBY, ESQ.
Attorney for Debtor